

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

January 4, 2007

Maahir B. Ismaaeel, a/k/a Maahir B. Ismaaeel H. Hackett
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Ismaaeel, Def. ID# 0304002130 - R2

DATE SUBMITTED: November 22, 2006

Dear Mr. Hackett:

Defendant Maahir B. Ismaaeel, a/k/a Maahir B. Ismaaeel H. Hackett (“defendant”), has filed his second motion for postconviction relief. This motion is grounded upon a misstatement of fact which this Court made in its October 28, 2005 decision denying defendant’s first motion for postconviction relief (“October 28, 2005 decision”). Pursuant to the interest of justice exception to the procedural bars, Super. Ct. Crim. R. 61(i)(4), the Court will consider the pending motion.

On or about April 3, 2003, defendant was arrested on charges of trafficking in cocaine in an amount between 5 and 50 grams, possession with intent to deliver a controlled substance, maintaining a dwelling for keeping a controlled substance, conspiracy in the second degree, and possession of drug paraphernalia. Defendant’s trial counsel was Carole J. Dunn, Esquire (“trial counsel”). At the time of case review, trial counsel asked to pursue a motion to suppress. The

Court denied the motion as untimely.

Defendant was tried before this judge, after waiving a jury trial, on August 27 and 28, 2003. He was found guilty on all but one charge.

In the first postconviction relief motion, the Court assumed trial counsel was ineffective for not timely filing a motion to suppress. It then examined whether any prejudice resulted therefrom. The Court concluded there was no prejudice because the motion to suppress would not have been granted. In reaching that conclusion, the Court found as a fact that the probation officers detained defendant because an administrative warrant was outstanding.¹

After reviewing the record again, in particular, pages A-18 - A-23 of the August 27, 2003 trial transcript; the administrative warrant, which defendant submitted as Exhibit B to his pending motion; and the Probation Officer's Arrest/Incident Report, which defendant submitted as Exhibit C to his pending motion, it is clear this factual finding is incorrect. It is clear that the administrative warrant² was filed after defendant's arrest on violation of probation charges and on new criminal charges.

The question is whether the misstatements affect the Court's decision on whether a motion to suppress would have been granted. To answer that question, I review the facts and apply the law to those facts.

On April 3, 2003, Probation Officers Timothy Jones and Lisa Fell undertook a home

¹At page 2 of the October 28, 2005 decision, the Court stated: "[T]here was an active warrant for his arrest." At page 6 of the October 28, 2005 decision, the Court stated: "They learned he had an administrative warrant outstanding. They then detained him."

²Contrary to defendant's assertion, the prosecutor had no obligation to produce that warrant in this case.

confinement check at the home of Carol Murray, who was on probation. While there, they came into contact with defendant. Defendant was acting in a nervous manner. They asked him his name and whether he was on probation. Defendant gave the name “Maahir Bin Ismaaeel” and stated he was not on probation. Because of the nervous way he was acting, the officers had his name run and learned that he actually was on probation. They had him stay put while they checked on this information. Once they learned he was on probation, they handcuffed him and Mirandized him. Defendant agreed to talk to them. Defendant said he had gone to the probation office but had not been assigned an officer. Officer Jones did not believe that information.³ The officer explained to defendant that he was going to conduct a pat down search. It was then that defendant confessed he had cocaine on him. Because Ms. Murray’s son had come into the house, the probation officers did not search him. The State Police performed the physical search of defendant.

Probation officers “shall exercise the same powers as constables under the law of this State....” 11 Del. C. § 4321(d). Constables shall “[e]xercise the same powers as peace officers and law-enforcement officers, in order to protect life and property, while in the performance of the lawful duties of the employment.” 10 Del. C. § 2705. Peace officers may demand the name of a person whom they suspect is committing or has committed a crime and may detain such person who fails to adequately give identification or explain his or her actions. 11 Del. C. §

³Officer Jones’ testimony at page A-20 of the August 27, 2003, trial transcript provides:

I asked him if he was aware of his status with probation, and he stated that he was. He informed me that he had reported to the Wilmington probation office, but had not been assigned an officer. I told him that I did not believe that, because they are given a reporting notice and the offender signs it to return.

1902.⁴ If a probation officer determines, in his judgment, that there has been a violation of probation, then that officer may detain the probationer.11 Del. C. § 4334(b).⁵

In this case, defendant's nervous, suspicious behavior gave the officers reasonable ground to think he might have committed a crime and to ask his name and business. The officers were permitted to detain him to verify his name and probation status. Once they learned that defendant was on probation and had lied about that, they had, in their judgment, the right to suspect defendant was violating his probation and to detain him for such a violation. Defendant's answer about his reporting status verified this belief of a probation violation which subjected defendant to arrest. The probation officers did not search defendant, the State Police did; consequently, there is no basis for arguing the Department of Correction's search policy was violated. The

⁴In 11 Del. C. § 1902, it is provided:

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

⁵In 11 Del. C. § 4334(b), it is provided in pertinent part:

[A]ny probation officer, when in the ... probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant

defendant's detention and search were valid. No motion to suppress would have been granted.

In conclusion, the Court's misstatements in the October 28, 2005 decision are of no consequence to its decision on defendant's motion for postconviction relief. Had the motion to suppress been heard, it would have been denied. Defendant, thus, cannot show any prejudice for the motion not being presented.

For the foregoing reasons, defendant's second motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Carole J. Dunn, Esquire
Adam D. Gelof, Esquire